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The Honorable Chris Koster, Chairman
Special Committee to Investigate Medicaid Fraud
State Capitol, Room 225
Jefferson City, MO 65101

Dear Chairman Koster:

I am pleased that Senator Gibbons has assigned your Committee to look into Medicaid fraud and how the State of Missouri can better detect and prosecute this fraud, particularly when committed by health care providers. While my office has made great strides in fighting provider fraud during my tenure as Attorney General, I hope that your Committee will consider additional tools to make my office even more effective on behalf of Missouri's taxpayers.

As you may recall, Missouri was in the minority of states that did not have a Medicaid Fraud Control Unit (MFCU) when I took office in 1993. I was pleased that both Republicans and Democrats worked to pass the authorizing legislation and appropriate the necessary state matching funds to provide the groundwork for a unit here. The MFCU was created in1994 to assist the federal government in identifying provider fraud. Section 191.905, RSMo, prohibits health care providers from "knowingly making or causing to be made a false statement or false representation of material fact in order to receive a health care payment. . .". The statute goes on to detail the types of conduct that constitute the crime of provider fraud.

Since its inception more than 10 years ago, the MFCU has been effective in uncovering and prosecuting provider fraud around the state. In 2005, my office collected $27.9 million from providers who have defrauded the Medicaid program.

To put our efforts in context, it is helpful to compare my unit's effectiveness to that of our contiguous states. Based on the most recent data, my unit's average recovery per staff member ranked 4th nationally and 2nd among the 9 states in the Midwest region. Our staff has been dedicated and aggressive in pursuing Medicaid fraud and these rankings bear that out.

While we are pleased with our recent success, we know that there is more work to do. That's where your Committee can make a difference - if you address the following six areas, you will enhance our ability to root out fraud and elder abuse.

- **Create State False Claims Act for Medicaid fraud.**
  This Act, already adopted in 17 jurisdictions, is modeled on the Federal False Claims Act. This proposal recognizes that provider fraud comes in many shapes and sizes and requires more than just the cooperative efforts of state and federal government to police it. The Act would provide a means for individuals who know about ongoing fraud to file an action on behalf of the State. The Attorney General would have an opportunity, if the claim has merit, to intervene and proceed against the alleged perpetrator.

- **Require pharmaceutical companies to disclose and certify, under penalty of perjury, their Average Manufacturer's Price (AMP) and Average Sales Price (ASP) to the Division of Medical Services on a monthly basis.**
  This certification would ensure transparency in drug prices so that the State would have a basis to compare the price the pharmaceutical company is paid for the drug versus the price the State pays the retail pharmacy which dispenses the drug. Texas, which has such a provision, has been one of the leading states in using this data to prosecute pharmaceutical companies that are overcharging the Medicaid program.

- **Impose criminal sanctions for providers who obstruct an investigation.**
  Providers should cooperate with investigations into allegations of Medicaid fraud. Unfortunately that is not always the case. Our investigators need to have adequate penalties in the law to ensure that an uncooperative provider is subject to sanctions for failing to cooperate. The Committee should recommend criminal sanctions, as there are currently in federal law, for any provider who obstructs an investigation or makes false statements to our investigators. Moreover, the Committee should make it a crime for a provider to knowingly destroy or conceal records, or fail to maintain adequate records. These changes will enhance our ability to detect fraud while conserving our resources in these cases.

- **Provide enhanced investigative tools to uncover fraud.**
  It is imperative that our investigators have immediate access to a provider's facility when following up on a referral of Medicaid fraud. The Committee should, consistent with federal regulation, recommend language excluding any provider from the Medicaid program for failing to grant immediate access to the MFCU. Also, the Committee should consider creating a special health care fraud subpoena that would require providers to produce documents on an expedited basis.

- **Expand the definition of "abuse" of a nursing home resident to include financial abuse.**
  The Legislature recently made some needed changes to protect the elderly from the crime of financial exploitation. While this crime fits well when the victim is

homebound and a friend or relative is exerting undue influence to steal the victim's assets, it does not fit neatly in the nursing home context where the "undue influence" element may be missing. The Legislature should amend Section 198.006, RSMo, to define "abuse" to include financial crimes against the resident. This change would provide our office with the tools to be as aggressive in pursuing the financial crimes as we are when the resident suffers physical abuse at the hands of nursing home staff.

- **Eliminate the loophole that allows nursing home operators to avoid civil penalties when they commit violations impacting patient health or safety.** In 2003, the Legislature passed a law that imposes a civil penalty on nursing homes when they violate a Class I licensing standard.[1] Previously, the nursing home could avoid much of the penalty if it had corrected the violation by the time the State reinspected it - often 30 to 60 days after the incident that may have led to serious injury or death of a resident. While this change was long overdue, the Legislature neglected to make the same change for Class II violations - these are also violations that directly impact on the safety, health or welfare of residents. In fact, logic leads us to the conclusion that imposing the fine on Class II violations may be even more important if that fine reforms that nursing home's behavior **before** it violates any Class I standard.

These proposed tools, if passed by the General Assembly, would improve our unit's efficiency and effectiveness in weeding out provider fraud and abuse. I thank you for your willingness to tackle this issue and we stand ready to assist you and the Committee as you begin your work.

Sincerely,

JEREMIAH W. (JAY) NIXON
Attorney General

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[1] Class I standards are those standards which, when violated, present either imminent danger to the health, safety or welfare of any resident or a substantial probability that death or serious physical harm would result.